

## Small Business Administration

## § 107.230

you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

### CAPITALIZING AN SBIC

#### § 107.200 Adequate capital for Licensees.

You must meet the requirements of this § 107.200 to qualify for a license, to continue as a Licensee, and to receive Leverage.

(a) You must have enough Regulatory Capital to provide reasonable assurance that:

(1) You will operate soundly and profitably over the long term; and

(2) You will be able to operate actively in accordance with your Articles and within the context of your business plan, as approved by SBA.

(b) In SBA's sole discretion, you must be economically viable, taking into consideration actual and anticipated income and losses on your Loans and Investments, and the experience and qualifications of your owners and managers.

#### § 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on or after October 1, 1996 must have Leverageable Capital of at least \$2,500,000 and must meet the applicable minimum Regulatory Capital requirement:

(1) *Licensees other than Participating Securities issuers.* A Licensee that does not wish to be eligible to apply for Participating Securities must have Regulatory Capital of at least \$5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause may license an applicant with Regulatory Capital of at least \$3,000,000, but only if the applicant:

(i) Has satisfied all licensing standards and requirements except the minimum capital requirement, as determined solely by SBA;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least \$5,000,000.

(2) *Participating Securities issuers.* A Licensee that wishes to be eligible to apply for Participating Securities must have Regulatory Capital of at least \$10,000,000, unless it demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount. Under no circumstances can the Licensee have Regulatory Capital of less than \$5,000,000.

(b) *Companies licensed before October 1, 1996.* A company licensed before October 1, 1996 must meet the minimum capital requirements applicable to such company, as required by the regulations in effect on September 30, 1996. See § 107.1120(c)(2) for Leverage eligibility requirements.

[63 FR 5866, Feb. 5, 1998]

#### § 107.230 Permitted sources of Private Capital for Licensees.

Private Capital means the contributed capital of a Licensee, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a Licensee.

(a) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate Licensee, or the partners' contributed capital of a Partnership Licensee, in either case subject to the limitations in paragraph (b) of this section.

(b) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by a Licensee from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from any Federal, State, or local government agency or instrumentality, except for:

(i) Funds invested by a public pension fund;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation established before October 1, 1987, to the extent that such revenues are reflected in the retained earnings of the corporation; and